

### **REMARKS/ARGUMENTS**

Claims 1-44, 46-48 and 56-63 are pending in this application. Claims 19-32, 36-44 and 46-48 stand allowed and claims 1-6, 13-18, 56 and 57 have been rejected. Claims 15-17 and 33-35 are objected to because of informalities and claims 33-35 would be allowable if the informality is corrected. Claims 7-12 and 58-63 are objected to as being dependent on upon a rejected base claim, but would be allowable if rewritten in independent form. Claims 45 and 49-55 were previously cancelled without prejudice. The Examiner is thanked for the indicated allowability of claims 19-32, 36-44 and 46-48, and the indication of allowable subject matter in claims 7-12 and 58-63. Independent claims 7 and 58 have been amended into independent claims format and including all of the limitations of the base claim and nay intervening claims.

No new matter has been added by this amendment. Independent claims 1 and 56 have been amended to make explicit what was already inherent and implicit in the application and puts the application in condition for allowance, or at least better condition for appeal. Therefore, this amendment in no way changes the scope of the claims or raises new issues.

This Response is being filed in response to the outstanding Final Rejection, dated January 19, 2007, to which Applicants were given a three-month period to reply. Accordingly, the present response is being timely filed.

#### ***Rejections Under 35 U.S.C. 102(b)***

In the Final Rejection, the Examiner has maintained the prior rejection of claims 1-6, 13-18, 56 and 57 under 35 U.S.C. §102(b) as being anticipated by Brace et al., USP 6,342,057. Independent claims 1 and 56 have been amended to make explicit what was already implicit in

the claims and to thereby overcome the Office Action rejections. The rejections should be withdrawn and the application is respectfully in condition for allowance.

Independent claim 1 has been amended to recite a drill guide having a guide barrel and an alignment assembly wherein “the guide barrel is not capable of being pivotable relative to the alignment assembly.” The amendment to claim 1 is made without prejudice and to expediate prosecution since it is merely to clarify what was already inherent and implicit in claim 1. The Examiner reasoned that since the device of Brace may be locked at a particular angle it is capable of not being able to pivot when locked. However, the guide barrel in the drill guide of Brace, unlike the current invention, is always capable of being pivotable relative to the alignment assembly (see, e.g. col. 6, lines 19-28; col. 12, lines 37-39 and col. 15 lines 37-39). Owing to the connection between the guide barrel and the alignment assembly, the drill guide of claim 1 requires that they are never capable of being pivotable relative to each other. Thus, claim 1 is distinguished from the device in Brace where the guide barrel is pivotable with respect to the alignment assembly and while at times the guide barrel may be locked so that it is temporarily unable to pivot with respect to said alignment assembly, the guide barrel nevertheless always has the capability of being pivotable with respect to the alignment assembly.

The Examiner additionally asserted that “more importantly” claim 1 uses the “open” transition “comprising,” which does not preclude additional limitations or capabilities, so Brace is not inapposite because it is capable of being both pivotable in its unlocked position as well as not pivotable in its locked position. However, just because a claim uses the transition term “comprising” does not permit the additional capabilities or limitations of dependent claims to run counter to, be contrary to or be inconsistent with other limitations or elements of the claim.

Claim 1 is directed to a drill guide that comprises a guide barrel and that guide barrel is not capable of being pivotable with respect to the alignment assembly. A drill guide that has an unlocked condition whereby the guide barrel pivots with respect to the alignment assembly does not meet the limitation that the guide barrel is not capable of being pivotable relative to the alignment assembly.

Independent claim 56 has been amended and now recites a drill guide having a location post having a “longitudinal axis” and wherein the location post is “pivotable ... relative to the bone plate.” This amendment is made without prejudice and to expedite prosecution as it merely clarifies what was already inherent and implicit in claim 56. The examiner was concerned, although unjustifiably so, that claim 56 permitted the location post to be placed in a bone plate recess and, *together with the plate*, be pivoted because the Office Action stated that claim 56 did not necessarily claim relative pivotability between the location post and the bone plate recess. To alleviate this concern Applicants have changed the claim to explicitly recite that the location post is “pivotable...relative to the bone plate.” Applicants therefore submit that the rejection of independent claim 56, along with the rejection of dependent claim 57, should be withdrawn.

#### ***Objections Based on Informalities***

Claims 15-17 and 33-35 were objected to for informalities. Specifically, both claims 15 and 33 were missing the word “be” between “not” and “rotated.” Amendments have been made to claims 15 and 33 to address and overcome Examiner’s objections to claims 15-17 and 33-35. Therefore, these objections should be withdrawn.

#### ***Objections Based on Being Dependant on a Rejected Base Claim***

Claims 7-12 and 58-63 were objected to as being dependant on a rejected base claim. The Examiner states in the Office Action that these claims would be allowable if rewritten in independent form. In accordance with the Examiner's suggestion, Claims 7 and 58 have been rewritten in independent form. Thus, claims 7-12 and 58-63 are allowable and these objections should be withdrawn.

### CONCLUSION

In light of the above remarks, Applicants respectfully request that the Examiner reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney if a telephone call could help resolve and remaining issues.

The Examiner is requested to note the new correspondence address of the attorney of record indicated in the signature block below.

Date: April 18, 2007

Respectfully submitted,

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